

### REMARKS

This responds to the Office Action mailed on November 7, 2008.

Claim 35 is cancelled herein without prejudice. As a result, claims 1, 34 and 36 are now pending in this application. The Examiner has indicated that claims 1, 34 and 36 are allowed. Thus, Applicants have cancelled claim 35 solely to expedite issuance of claims 1, 34 and 36.

### Priority

The Examiner alleged that the prior-filed application, in particular, serial number 60/448,828 [hereinafter the '828 application] does not provide adequate support or enablement for the subject matter of claims 34-36 under 35 U.S.C. § 112, first paragraph.

Applicants respectfully traverse. However, this issue is now moot as applied to claim 35, since this claim is cancelled without prejudice. Claims 34 and 36 recite isolated variants of SEQ ID NO: 1. The variant of claim 34 results from the substitution of the glutamine residue at position 525 with an arginine residue, while the variant of claim 36 results from the substitution of the asparagine residue at position 827 with a serine residue.

The '828 application discloses SIMA135, a protein of SEQ ID NO: 1. *See* page 3, lines 8-9. The '828 application also states that the invention encompasses SIMA135 proteins, as well as variants thereof. *See* page 11, lines 4-5. The '828 application states that a variant of SIMA135 includes a protein derived from native SIMA135 by substitution of one or more amino acids at one or more sites in the native protein. *See* page 11, lines 17-22. The '828 application states that variants may result from genetic polymorphism. *See* page 11, lines 22-23. The '828 application also refers to amino acid residues 525 and 827 as positions of differences between SIMA135 and other proteins associated with signet ring carcinoma, and more specifically, that the amino acids at these positions are either arginine or glutamine and serine or asparagine, respectively. *See* page 9, line 29 to page 10, line 5. Therefore, the application supports a variant of SEQ ID NO: 1 in which the residue at position 525 is either arginine or glutamine, as well as a variant of SEQ ID NO: 1 in which the residue at position 827 is either serine or asparagine.

Accordingly, the subject matter of claims 34 and 36 is fully supported by the '828 application, and Applicants respectfully request reconsideration and acknowledgment that the priority claim to application serial number 60/448,828 is proper.

§102 Rejection of the Claims

Claim 35 was rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Schweifer et al. (WO 02/04508A1 – English equivalent US 2002/0142003A1) and by Tang et al. (WO 02/070539A2). These rejections are moot in view of the cancellation of claim 35.

**CONCLUSION**

Applicant respectfully submits that the pending claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 373-6913 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 9, 2009 (Monday).

CANDIS BUENDING

Name

Signature

